

RECEIVED

STATE OF MARYLAND,

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IN THE

APR 28 2016

Plaintiff,

*

CIRCUIT COURT

Criminal Div.
Circuit Court For
Baltimore City

v.

*

FOR

EDWARD NERO,

*

BALTIMORE CITY

Defendant.

*

Case No. 115141033

* * * * *

**ADMINISTRATIVE DISTRICT COURT COMMISSIONER
LINDA LEWIS' MOTION TO QUASH SUBPOENA
AND FOR PROTECTIVE ORDER**

Administrative District Court Commissioner Linda Lewis, through her undersigned counsel, pursuant to Rule 4-266(c), moves to quash the subpoena directed to her and for a protective order, for the following reasons:

1. Defendant, Edward Nero, has caused a subpoena to be issued compelling Linda Lewis, Administrative Commissioner, District Court of Maryland for Baltimore City, to personally appear and testify at Defendant's criminal trial scheduled for May 10, 2016, at 9:30 a.m. (Exhibit 1 – subpoena to Commissioner Lewis).

2. The case in which the subpoena is issued involves a criminal case in which the Defendant, a Baltimore City police officer, is charged in connection with the arrest of Freddie Grey, Jr. Baltimore City police officers Alicia White, Caesar Goodson, Jr., William Porter, Garrett Miller and Brian Rice are also charged in connection with Mr. Grey's arrest.

3. Commissioner Lewis issued Defendant, Edward Nero, and Alicia White's

statement of charges and arrest warrants. (Exhibit 2 – Nero charging documents); (Exhibit 3 – White charging documents).

4. The connection between the criminal matter which is the subject of this trial and Commissioner Lewis derives from the exercise of her judicial functions. In determining if an employee of the court has performed a judicial act, the court uses a functional analysis in considering “whether [the act] is a function normally performed by a judge” and “[the parties] dealt with the judge in his judicial capacity.” *Parker v. State*, 337 Md. 271, 290 (1995) (quoting *Stump v. Sparkman*, 435 U.S. 349, 356-64 (1978)), or whether the act performed by court personnel is “integral to the judicial process.” *Briscoe v. LaHue*, 460 U.S. 325, 335 (1983).

Court commissioners are judicial officers and, therefore, integral to the judicial process. Md. Rule 4-102(f) (“‘Judicial Officer’ means a judge or District Court commissioner.”) The Court of Appeals has held that “it is beyond question that Commissioners of the District Court of Maryland are judicial officers in name and in fact. The Maryland Rules so designate them. ... Their duties are those which may also be exercised by District Court Judges. They are, in the true sense of the term, ‘judicial officers,’ and they perform judicial functions.” *State v Smith*, 305 Md. 489, 517 (1986). By statute, “[a] commissioner shall receive applications and determine probable cause for the issuance of charging documents,” Md. Code Ann. Cts. & Jud. Proc. (“CJP”) § 2-607(c)(1), “warrant, or criminal summons” CJP § 2-607(c)(2), and “set bond ... or release ... on personal recognizance.” *Id.* Rule 4-211(b)(1) provides that “a judicial officer may

file a statement of charges in the District Court against a defendant who has not been arrested upon written application containing an affidavit showing probable cause that the defendant has committed the offense charged.” Additionally, Rule 2-608 permits district court commissioners to issue statement of charges against law enforcement officers after investigation of the alleged offense by the State’s Attorney. The determination of probable cause, the issuance of warrants and charging documents, and determining pre-trial release are quintessential judicial acts performed by court commissioners, who are judicial officers. *See Davis v. DiPino*, 337 Md. 642, 652 (1995) (recognizing that a district court commissioner is “entitled to absolute judicial immunity from civil liability” for his actions as a judicial officer in issuing arrest warrants.)

5. The subpoena must be quashed, and a protective order issued because Commissioner Lewis is entitled to absolute judicial immunity for actions taken in exercising her judicial functions, *Parker v. State*, 337 Md. 271 (1995). *See D’Aoust v. Diamond*, 424 Md. 549, 598 (2012) (individual entitled to absolute judicial immunity if “the act performed was by a judicial officer” and “the act was a judicial act”). “Absolute immunity is designed to free the *judicial process* from the harassment and intimidation associated with litigation.” *Gill v. Ripley*, 352 Md. 754, 769 (1999) (citation omitted) (emphasis in original).

District court commissioners cannot be compelled to testify concerning any aspect of their judicial decision making process including their mental processes or the reasons that motivated them in carrying out their official duties. *See, e.g., Grant v. Shalala*, 989

